

Leslie S. Johnson [Oregon Bar No. 954727]
Samuels Yoelin Kantor, LLP
ljohnson@samuelslaw.com
111 SW 5th Avenue
Suite 3800
Portland, OR 97204

Anna M. Rathbun (*pro hac vice* forthcoming)
Michael G. Egge
Doug Tift
LATHAM & WATKINS LLP,
555 Eleventh Street NW
Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Michael.Egge@lw.com
Anna.Rathbun@lw.com
Doug.Tift@lw.com

*Attorneys for Non-Party
Nestlé USA*

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,**

Plaintiffs,

v.

Case No., 3:24-cv-00347-AN

DECLARATION OF TODD BURSKI

Case No. 3:24-cv-00347-AN
DECLARATION OF TODD BURSKI

**THE KROGER COMPANY,
ALBERTSONS COMPANIES, INC.,**

Respondents.

DECLARATION OF TODD BURSKI

COMMONWEALTH OF VIRGINIA)
)
)
CITY OF ARLINGTON)

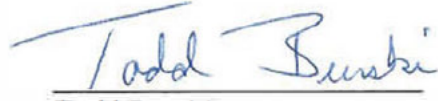
I, Todd Burski, based upon my personal knowledge concerning matters to which I am competent to testify, hereby declare as follows:

1. I am currently a senior counsel at Nestlé USA.
2. Nestlé USA is not a party to *Federal Trade Commission, et. al. v. The Kroger Co., et. al.*, Case No. 3:24-cv-00347-AN.
3. I am familiar with the Declaration of Leonard Michael Luiso, executed on February 15, 2024. Mr. Luiso is an employee of Nestlé USA.
4. I understand that the declaration was provided to the parties to Case No. 3:24-cv-00347-AN, and that the Federal Trade Commission has introduced the document as PX5017.
5. I have reviewed and am personally familiar with Mr. Luiso's declaration. Based on my review of the declaration, my position at Nestlé USA, my deep knowledge of Nestlé USA's business, and my familiarity with the confidentiality protections normally afforded to this type of information by Nestlé USA, I submit that disclosure of the information in Mr. Luiso's declaration to the public or competitors of Nestlé USA would cause serious competitive injury to Nestlé USA.
6. The declaration contains detailed information regarding Nestlé USA's pricing and commercial strategy, along with information regarding how Nestlé USA will approach pricing and commercial strategy in the future. Further, the declaration includes detailed descriptions of Nestlé USA's proprietary method for how customers accrue commercial funds and allowances during their interactions with Nestlé USA. This information is extremely sensitive for Nestlé USA because it is a core part of the customer's relationship with Nestlé USA, affecting pricing, product placement, promotion, sales volume, sales strategies, and marketing strategies, among other areas.
7. The information contained in Mr. Luiso's declaration is not otherwise shared with competitors or the public in the ordinary course of business, and Nestlé USA has undertaken significant efforts to preserve that confidentiality.
8. Nestlé USA took steps to preserve the confidentiality of the document by branding it "HIGHLY CONFIDENTIAL MATERIAL," "CONFIDENTIAL TREATMENT REQUESTED," and "CONTAINED CONFIDENTIAL AND PROPRIETARY BUSINESS SECRETS." Further, I understand that Nestlé USA's outside counsel has communicated with counsel for the parties to this litigation on multiple occasions and reiterated the need to afford the document the highest level of confidential treatment, and

Nestlé USA has consistently assured that the declaration received the highest level of confidential protection under all relevant Protective Orders.

9. If the public or Nestlé USA's competitors learned the information contained in this declaration, it could provide other companies with valuable insight into Nestlé USA's strategies with respect to customer relations, pricing, production promotion, sales, and marketing. This could affect competitive behavior in the marketplace and cause significant competitive harm to Nestlé USA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.


Todd Burski

Signed this 8th day of OCTOBER, 2024.

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused a true, exact and full copy of the foregoing DECLARATION OF TODD BURSKI be served on each of the following parties or persons by the method indicated below:

Counsel for the U.S. Federal Trade Commission

Rohan Pai (rpai@ftc.gov)
 Charles Dickinson (cdickinson@ftc.gov)
 James H. Weingarten (jweingarten@ftc.gov)
 Emily Blackburn (eblackburn@ftc.gov)
 Paul Frangie (pfrangie@ftc.gov)
 Laura Hall (lhalll@ftc.gov)
 Janet Kim (jkim3@ftc.gov)
 Kenneth A. Libby (klibby@ftc.gov)
 Eric Olson (eolson@ftc.gov)
 Harris Rothman (hrothman@ftc.gov)
 Albert Teng (ateng@ftc.gov)
 Elizabeth Arens (earens@ftc.gov)
 Jacob Hamburger (Jhamburger1@ftc.gov)
 Joshua Smith (jsmith3@ftc.gov)
 Katherine Drummonds
 (kdrummonds@ftc.gov)
 Lily Hough (lthough@ftc.gov)

Via Electronic Service by the court's E-filing system at the party's email address as recorded on the date of service in the E-filing system

Katherine Bies (kbies@ftc.gov)

Via Email

1	<i>Counsel for Albertsons Companies, Inc.</i>	
2	Edward D. Hassi (thassi@debevoise.com)	Via Electronic Service by the court's E-filing system at the party's email address as recorded on the date of service in the E-filing system
3	Michael Schaper (mschaper@debevoise.com)	
4	Shannon Rose Selden (srselden@debevoise.com)	
5	J. Robert Abraham (jrabraham@debevoise.com)	
6	Natascha Born (nbom@debevoise.com)	
7	James A. Fishkin (james.fishkin@dechert.com)	Via Email
8	Michael G. Cowie (mike.cowie@dechert.com)	
9	George L. Paul (gpaul@whitecase.com)	
10	Marieugenia Cardenas (mcardenas@debevoise.com)	
11	Jaime Freilich-Fried (jmfried@debevoise.com)	
12	<i>Counsel for The Kroger Company</i>	
13	Luna Barrington (luna.barrington@weil.com)	Via Electronic Service by the court's E-filing system at the party's email address as recorded on the date of service in the E-filing system
14	Mark A. Perry (mark.perry@weil.com)	
15	Luke Sullivan (luke.sullivan@weil.com)	
16	Sonia K. Pfaffenroth (sonia.pfaffenroth@arnoldporter.com)	
17	Matthew M. Wolf (matthew.wolf@arnoldporter.com)	
18	Jason C. Ewart (jason.ewart@arnoldporter.com)	Via Email
19	Joshua M. Davis (joshua.davis@arnoldporter.com)	
20	Matthew M. Shultz (matthew.shultz@arnoldporter.com)	
21	Yasmine Harik (yasmine.harik@arnoldporter.com)	
22	John Holler (john.holler@arnoldporter.com)	
23	Michael B. Bernstein (michael.b.bernstein@arnoldporter.com)	

1 Dated: October 10, 2024

2 Respectfully submitted,

3 s/ Leslie S. Johnson

4 Leslie S. Johnson [Oregon Bar No. 954727]

5 Samuels Yoelin Kantor, LLP

6 ljohnson@samuelslaw.com

7 111 SW 5th Avenue

8 Suite 3800

9 Portland, OR 97204

10 and

11 Anna M. Rathbun (*pro hac vice forthcoming*)

12 Michael G. Egge

13 Doug Tift

14 LATHAM & WATKINS LLP,

15 555 Eleventh Street NW

16 Suite 1000

17 Washington, D.C. 20004

18 Telephone: (202) 637-2200

19 Facsimile: (202) 637-2201

20 Michael.Egge@lw.com

21 Anna.Rathbun@lw.com

22 Doug.Tift@lw.com